

C O P Y

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Feb. 18

Mr. William P. House
Timber Tax Study Commission
Room 319
State House

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SEP 22 1998

CONCORD, N.H.

Dear Mr. House:

Under date of February 15, 1954 you have asked the opinion of this office on the question whether it would be constitutional to impose a severance tax on timber cut based on a predetermined amount of tax per thousand feet or per cord — the amount of tax being set by statute for various species groups and quality classes within such groups. We answer in the negative.

In the fourth item of an opinion addressed to Mr. Henry C. Waldo under date of February 12, 1954, we advised concerning the constitutional requirement that all taxes be so laid that "each man's taxable property shall bear its due proportion of the tax according to its value."

We find nothing in the constitutional amendment of 1942 (Pt. II, Art. 5, Const. of New Hampshire) to vary this rule. Value must always be recognized as the basis of any tax.

It is true that the constitutional provision cited permits special assessments, rates and taxes on growing wood and timber. We take this to mean that a distinction may be made between growing wood and timber on the one hand, and the remaining mass of taxable property on the other. Thus, with respect to growing wood and timber the General Court need not apply the average rate applicable to other property. A special rule of assessment may be applied to it as compared with other property; the same answer would not now be given on inquiry as was given to the Legislature in 1913. In that year the Legislature asked the Supreme Court if standing wood and timber might be taxed on the basis of seventy-five percent of its true value. The answer was in the negative. Opinion of the Justices, 76 N.H. 609. But nowhere — including the debates of the constitutional amendment, see Jour. of Const. Conv., pages 41-50 — do we find a departure from the concept of true value as the original measure, even though a proportion of true value may now be used as the basis of the ultimate assessment. Proportionality of tax within the

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class of property known as "growing wood and timber" is still required. In whatever manner the General Court shall exercise the power granted in the constitutional amendment, the tax upon growing wood and timber must bear a relation to its value. Your suggestion would substitute legislative fiat for actual determination of value. Such fiat would stand only if, in fact, it actually reflects, at the time applied, the true relationship between the values under consideration.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEM:RM